

6. **THE REVOCATION OF THE BANKS PENINSULA AMUSEMENT DEVICES AND SHOOTING GALLERIES BYLAW 1996, THE BANKS PENINSULA PUBLIC SWIMMING POOLS BYLAW 1972, AND THE CHRISTCHURCH CITY BYLAW NO 103 (1979) PUBLIC SWIMMING POOLS**

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PURPOSE OF REPORT

1. The purpose of this report is to recommend to the Committee that it recommend to Council that it allow the automatic revocation on 1 July 2008, under section 293(3) of the Local Government Act 2002, of the:

- Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 (attached)
- Banks Peninsula Public Swimming Pools Bylaw 1972 (attached)
- Christchurch City Bylaw No 103 (1979) Public Swimming Pools (together, “the Bylaws”) (attached)

on the grounds that adequate provision for the management of amusement devices and public swimming pools is provided for by other legislation, and/or by the terms and conditions of use and the normal operating procedures for public swimming pools and other Council policies.

EXECUTIVE SUMMARY

2. A review was undertaken on the Bylaws, to ascertain whether the provisions of the Bylaws were still current or needed amendment.

3. The purpose of the Bylaws was:

- To set the process for the licensing of shooting galleries and the issuing of permits for amusement devices.
- To regulate public bathing and impose controls over public baths.

4. Prior to the Banks Peninsula District joining the Christchurch City Council the Council did not have bylaws covering amusement devices and nuisances. The control of amusement devices is covered by the provisions of the Amusement Devices Regulations 1978.

5. The two Swimming Pools Bylaws are very similar, but the provisions of both bylaws are now covered either by the terms and conditions of use on persons entering the particular public swimming pools or other Council policies, or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.

6. There is no need to re-enact the Bylaws or make new bylaws with the same provisions because the harm the Bylaws were originally introduced to deal with is now addressed in other ways.

7. The Bylaws were made or had effect under now repealed provisions of the Local Government Act 1974, and are therefore subject to section 293(3) of the Local Government Act 2002, which provides that such bylaws, not revoked or expiring before 1 July 2008, are revoked on that date.

8. The proposal in this report is that the Council allow the Bylaws to automatically be revoked on 1 July 2008, but to give notice to the public first, of the Council’s intention, to ascertain whether there are any objections to the Council simply allowing the statutory provision to take effect.

FINANCIAL IMPLICATIONS

9. There are no financial constraints to the automatic revocation of the Bylaws. If the Bylaws are revoked automatically under section 293(3) then this will be less cost for the Council than if it revoked the Bylaws prior to 1 July 2008, as this would require the use of the special consultative procedure.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

10. Not applicable.

LEGAL CONSIDERATIONS

11. The relevant sections of the Local Government Act 2002 (LGA02) are:

s.293 Bylaws

- (1) *Bylaws made or having effect under provisions of the Local Government Act 1974 that are repealed by this Act, being bylaws that were in force immediately before the commencement of this section, are deemed to be validly made under this Act and continue in force accordingly if validly made under the Local Government Act 1974 ...*
- (3) *Every bylaw to which this section applies that is not revoked or that does **not expire before 1 July 2008, is revoked on that date.***

s. 156 Special consultative procedure must be used in making, amending, or revoking bylaw made under this Act

- (1) *A local authority must use the special consultative procedure (as modified by section 86) in—...*
 - (c) *revoking a bylaw made under this Act.*

and

s.158 Review of Bylaws...

- (2) *A local authority must review a bylaw made by it under the Local Government Act 1974 **(other than a bylaw deemed to be made under this Act by section 293)**—*
 - (a) *no later than 1 July 2008, if the bylaw was made before 1 July 2003; and*
 - (b) *no later than 5 years after the bylaw was made, if the bylaw was made after 1 July 2003.*

12. This means that under the LGA02, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974 will be automatically revoked on 1 July 2008. There is no need to review such bylaws under section 158.
13. The Amusement Devices and Public Swimming Pools Bylaws were made under now repealed provisions of the Local Government Act 1974 (sections 684(1)(30), (33), and (33A) – section 686 was also relevant). Because these were the authorising powers for making the Bylaw, and not just the procedural provisions for making the Bylaw and they have been repealed, this means they are bylaws deemed to be made under the LGA02 by section 293(1), and are subject to section 293(3).
14. The powers embodied in the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 are a duplication of provisions contained in the Amusement Device Regulations 1978. The provisions in the two Public Swimming Pools Bylaws are now covered either by the conditions of use on persons entering the particular public swimming pools or other Council policies (the normal operating procedures), or legislation dealing with offensive or obstructive behaviour, etc, and coming under the control of the police.
15. As the Bylaws provisions are not considered necessary (they would be unlikely to pass the first test in section 155 of the LGA02, that a bylaw must be the most appropriate way of addressing the perceived problem) they should therefore be revoked, and allowing them to be revoked on 1 July 2008 by the operation of section 293(3) appears to be the appropriate course of action in this case.
16. The Bylaws could be revoked earlier than 1 July 2008, in accordance with section 156 of the LGA02, which requires that the special consultative procedure be used. However, section 293(3) was included in the LGA02 by way of an amendment in June 2006. Although there is nothing specific in the explanatory note to the Bill or the Select Committee report on this addition, its purpose seems to be to avoid the need for Councils to have to use the special consultative procedure in these instances of old obsolete bylaws.

Have you considered the legal implications of the issue under consideration?

17. As above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Page 146 of the LTCCP, level of service under regulatory services.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

19. As above.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

20. Aligns with the "Strong Communities" strategic direction by giving the public a chance to be consulted first, via the public notice, on the Council's intention, and thereby be involved in the decision making process.

CONSULTATION FULFILMENT

21. The preferred option recommends that a public notice be issued to ascertain the views of the public before the Council simply allows the Bylaws to be revoked in accordance with section 293

22. Members of the former Bylaw Reviews Sub Committee were contacted by e-mail and asked to raise any concerns they had about these bylaws being treated in this manner. No concerns were raised by sub committee members.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to Council that it resolve:

- (a) That its intention is to allow the Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996, the Banks Peninsula Public Swimming Pools Bylaw 1972, and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools to be revoked on 1 July 2008, in accordance with section 293(3) of the Local Government Act 2002, on the grounds that the provisions in these bylaws are redundant in that they are either covered by other legislation, and, in the case of public swimming pools, are no longer needed because of other council policies and the terms and conditions of use and normal operating procedures of the public swimming pools.
- (b) To issue a public notice in relation to resolution (a), seeking comments from the public on the Council's intention, and providing that any comments must be given to the Council within 1 month of the date of publishing the notice.
- (c) To consider any comments received from the public and then make a final decision on its intention in resolution (a).

BACKGROUND (THE ISSUES)

Background On Banks Peninsula Amusement Devices And Shooting Galleries Bylaw 1996

23. In 1996 the Banks Peninsula District Council adopted a number of chapters of the New Zealand Standard Model Bylaws to apply in the district, including NZS 9201, Chapter 10:1972 Amusement Devices and Shooting Galleries.
24. The Banks Peninsula Amusement Devices and Shooting Galleries Bylaw 1996 provides that no land or building shall be used as a site for an amusement device unless the device has a permit from the Council under the Amusement Devices Regulations 1968. There are also safety precautions the proprietor of the amusement device must comply with. The bylaw also provides for the licensing of any land or building used as a shooting gallery to which the public have access.
25. There was no equivalent Christchurch City bylaw and no record of any need for such a bylaw. The provisions in the LGA74 under sections 684(1)(31) and 686 related to bylaws for such matters have been revoked. The Amusement Device provisions in the bylaw duplicate the provisions of the Amusement Device Regulations 1978, and the safety requirements set out in the bylaw are inserted as Conditions on the Permit, as provided for by regulation 11. There is no record of any Shooting Gallery within the city and it is considered that this entire bylaw is obsolete and should be left to be revoked in accordance with section 293(3).

Background on the Banks Peninsula Public Swimming Pools Bylaw 1972 and the Christchurch City Bylaw no 103 (1979) Public Swimming Pools

26. The Public Swimming Pools Bylaw permits the local authority or superintendent to enforce operating procedures for the pool. For example, close the swimming pool in an emergency, charge fees and granting coaching and teaching rights. It also covers persons wearing medical dressings being prohibited from using the swimming pool, requires appropriate swimwear to be worn, provides controls over improper use of the swimming pool, unnecessary loitering and the causing of undue noise. It gives the superintendent power to prohibit anyone, who has been asked to leave the pool, from re-entering it for such period as he deems fit.
27. Christchurch City Council in 1979 and Banks Peninsula District in 1972 adopted Chapter 16, from the New Zealand Standard Model Bylaws NZS 9201 covering Public Swimming Pools. This is based on a 1972 model bylaw standard, that in turn was based a 1952 Standard (NZS791, Part XIV – Public Baths and Swimming Pools). The 1972 Standard supersedes the 1952 Standard.
28. The NZS9201, Chapter 16, was reconfirmed by New Zealand Standard in 1980. It was then superseded in 1999 Bylaws Cultural and Recreation Facilities NZS9201:16 -1999.
29. The Cultural and Recreational Facilities NZS9201:16 -1999 Standard Bylaws were withdrawn on 18 May 2007 with no replacement.
30. The Christchurch City Public Swimming Pools Bylaw has not been used or enforced by the Council since its introduction. No evidence can be found to demonstrate enforcement of the Banks Peninsula Bylaw.
31. The Bylaw provisions have not needed to be enforced because they have been overtaken by other legislation (the Health and Safety in Employment Act, and the Crimes Act), Council policies (fees and charges) and comprehensive industry wide quality standards which have been incorporated into Council operating policy. As the owner of the swimming pools the Council also has terms and conditions of use, that persons who enter the pool premises are required to comply with. Council continually enforces the operation of its swimming pool policy and conditions, and duties under the relevant statutes. Council continually audits its performance both internally and externally.

THE OBJECTIVES

32. To recommend the appropriate option to the Council to enable the Bylaws to be revoked on 1 July 2008 in accordance with section 293(3) of the LGA 02.

THE OPTIONS

33. The Council has the following options for dealing with the revocation of these section 293 bylaws:

Option 1

34. The Council may revoke the Bylaws now.

Under section 293(1) of the LGA02, a bylaw made under repealed provisions of the LGA74 is deemed to be a bylaw validly made under the LGA02. Therefore, if the bylaw is to be revoked before 1 July 2008, section 156 of the LGA02 applies, and the revocation must be in accordance with the special consultative procedure set out in sections 83 and 86. This requires that a statement of proposal and summary of information be prepared, approved by the Council and distributed/publicly notified, providing for a period within which submissions can be made on the proposal, of not less than one month. If anyone requests to be heard in relation to their submission then the Council must also provide for this, before making a final decision on whether or not to revoke the bylaw.

Option 2

35. Revoke the Bylaws now, and replace with new Bylaws.

This is the same as Option 1, with the addition of making new bylaws on the same subject matters as the revoked bylaws (and revoking the old bylaws within the body of the new bylaws). However, it does not appear that could be justified in terms of the test in section 155(1), that a bylaw be the most appropriate way to address the problem, given the background issues discussed above.

Option 3

36. The Bylaws may be left to lapse/be revoked automatically.

Under section 293(3), bylaws made or having effect under provisions of the LGA74 that are repealed by the LGA02, and that are not revoked, or do not expire, before 1 July 2008, are automatically revoked on that date. Allowing such bylaws to be revoked automatically under section 293(3) would remove the need to undertake any special consultative procedure. Notice could be given to the public on 1 July 2008 of the bylaws that have been revoked on this date. This option could be seen by the public as the Council not acting transparently, and hiding the fact that these bylaws will no longer be applicable on 1 July 2008 (even if they are redundant and are not currently acted on by the Council).

Option 4

37. The Council gives public notice of its intention to let the Bylaws be automatically revoked.

This is the same as option 3 above, but notice would be provided to the public first, so that if anyone objects to the Council simply acting in accordance with section 293(3), the Council is aware of those views before making a final decision to allow the bylaws to be automatically revoked on 1 July 2008.

THE PREFERRED OPTION

Option 4

38. As it will mean the public can express a view on whether or not the bylaws should be left to lapse under section 293(3), and the Council can then take those views into account before it confirms its intention. Allowing the bylaws to be revoked under section 293(3) involves significantly less expense and use of Council resources than a special consultative procedure.

ASSESSMENT OF OPTIONS

The Preferred Option

39. Option 4.

The Council gives public notice of its intention to let the Bylaws be automatically revoked on 1 July 2008.

	Benefits (current and future)	Costs (current and future)
Social	<p>The public can have a say on whether or not the Council should allow the Bylaws to be revoked automatically</p> <p>There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked</p> <p>Compliance with section 293(3) of the LGA02</p>	None
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaws environmental issues	None
Economic	Revoking the Bylaws means there will be no ongoing requirement that it should be enforcing these Bylaws	Costs of the public notice
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Giving public notice first will assist in achieving the community outcome "a well governed city".</p> <p>Impact on Council's capacity and responsibilities: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies: The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, but the delay in revocation, until July 2008, means that overlap will continue for longer than if these bylaws were revoked sooner.</p> <p>Views and preferences of persons affected or likely to have an interest: The preferred option of Inspections and Enforcement and Recreation & Sports staff.</p> <p>Other relevant matters: None known.</p>		

Option 3

40. The Bylaws revoke automatically on 1 July 2008, without prior public notice.

	Benefits (current and future)	Costs (current and future)
Social	There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked Compliance with section 293(3) of the LGA02	Without advising the public first that the Bylaws will revoke automatically there may be criticism of the Council for not acting transparently
Cultural	No specific matters	None
Environmental	No specific matters, as other legislation in place to deal with Bylaws environmental issues	None
Economic	Revoking the Bylaws means there will be no ongoing requirement that it should be enforcing these Bylaws	No effect on cost, as the Bylaws are not enforced/acted on in anyway currently; any enforcement required is carried out through other legislation
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Failing to advise the public first means the community outcome “a well governed city” may not be achieved.</p> <p>Impact on Council’s capacity and responsibilities:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori:</p> <p>None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies:</p> <p>The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, but the delay in revocation, until July 2008, means that overlap will continue for longer than if these bylaws were revoked sooner.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

Option 2

41. Revoke the Bylaws now, and replace with new Bylaws.

	Benefits (current and future)	Costs (current and future)
Social	<p>The public is consulted</p> <p>There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked and, if necessary, replaced</p>	<p>Having new Bylaws that overlap with other legislation and Council policies</p> <p>Overrides the mechanism provided in section 293(3) of the LGA02</p>
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	Costs of the special consultative procedure and the ongoing costs of enforcing the new Bylaws
<p>Extent to which community outcomes are achieved:</p> <p>Any community outcomes that are relevant to the Bylaws will still be achieved if new Bylaws were enacted. Using the special consultative procedure will assist in achieving the community outcome “a well governed city”, but having new Bylaws that overlap with existing legislation and policies may not achieve this community outcome.</p> <p>Impact on Council’s capacity and responsibilities:</p> <p>None.</p> <p>Effects on Maori:</p> <p>None.</p> <p>Consistency with existing Council policies:</p> <p>The overlap with existing policies will remain.</p> <p>Views and preferences of persons affected or likely to have an interest:</p> <p>Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters:</p> <p>None known.</p>		

Option 1

42. Revoke the Bylaws now.

	Benefits (current and future)	Costs (current and future)
Social	The public is consulted There is a general benefit for the community in obsolete and redundant Bylaws not remaining in existence and for the Council to be conducting its business efficiently by allowing such Bylaws to be revoked	Overrides the mechanism provided in section 293(3) of the LGA02
Cultural	No specific matters	None
Environmental	No specific matters	None
Economic	None	Costs of the special consultative procedure
<p>Extent to which community outcomes are achieved: Any community outcomes that are relevant to the Bylaws will still be achieved because other legislation or policies deal with the same subject areas. Using the special consultative procedure will assist in achieving the community outcome “a well governed city”.</p> <p>Impact on Council’s capacity and responsibilities: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Effects on Maori: None, as Council acts on issues that the Bylaws deal with through its powers under other existing legislation and policies.</p> <p>Consistency with existing Council policies: The revocation of the Public Swimming Pools Bylaws will prevent an overlap between the Bylaws and some policies, and there will be no delay in that revocation.</p> <p>Views and preferences of persons affected or likely to have an interest: Not the option preferred by Inspections and Enforcement and Recreation and Sports staff.</p> <p>Other relevant matters: None known.</p>		